

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NATALIE SOTO,

Plaintiff,

Civil Action

File No.: 1:24-cv-02911-SDG

v.

WENDELL HOLMES, JR.,

Defendant.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION
FOR LEAVE TO FILE SUR-REPLY [DOC. 58]**

COMES NOW Plaintiff Natalie Soto and respectfully submits this Response in Opposition to Defendant Wendell Holmes, Jr.'s Motion for Leave to File Sur-Reply [Doc. 58]. In support, Plaintiff shows the Court as follows:

I. INTRODUCTION

Defendant's request to file a sur-reply should be denied. The proposed sur-reply [Doc. 55, reattached to Doc. 58 as Exhibit A] was filed without leave of Court, and fails to meet the limited and exceptional circumstances under which such a filing may be permitted. The arguments Plaintiff raised in her reply brief [Doc. 51] were responsive to Defendant's opposition and do not justify additional briefing.

II. LEGAL STANDARD

The Federal Rules of Civil Procedure and the Local Rules for the Northern District of Georgia do not authorize sur-replies as a matter of course. A party must seek leave of court and establish that a sur-reply is warranted—typically where the movant raises new arguments or evidence in their reply brief. *See Byrom v. Delta Family Care—Disability and Survivorship Plan*, 343 F. Supp. 2d 1163, 1188 (N.D. Ga. 2004); *Hammett v. Am. Bankers Ins. Co.*, 203 F.R.D. 690, 695 n.1 (S.D. Fla. 2001). Even when sought properly, courts exercise caution, noting that “[t]o allow such surreplies as a regular practice would put the court in the position of refereeing an endless volley of briefs.” *Garrison v. Northeast Ga. Med. Ctr., Inc.*, 66 F. Supp. 2d 1336, 1340 (N.D. Ga. 1999).

III. ARGUMENT

A. Defendant’s Filing Was Procedurally Improper

Defendant filed his sur-reply [Doc. 55] before seeking leave. The procedural posture is therefore backwards—leave cannot retroactively authorize a filing made in violation of this Court’s Rules. The filing should be stricken as unauthorized, regardless of the content of the motion for leave. *See Khattab v. Morehouse Sch. of Med.*, No. 1:07-CV-196-RWS-LTW, 2009 WL 1513172, at *2 (N.D. Ga. May 28, 2009).

B. Plaintiff's Reply Raised No New Arguments

Defendant claims Plaintiff's reply brief raised new arguments, but this is incorrect. Plaintiff's reply [Doc. 51] merely:

- Cited Defendant's own prior admissions concerning his conduct under 15 U.S.C. § 6851;
- Addressed Defendant's procedural and factual inconsistencies;
- Responded directly to assertions raised in Defendant's opposition [Doc. 45].

These are not new arguments—they are responses to the record before the Court.

A reply that directly addresses arguments made in an opposition brief does not open the door for a sur-reply. *See, e.g., Fedrick v. Mercedes-Benz USA, LLC*, 366 F. Supp. 2d 1190, 1197 (N.D. Ga. 2005).

C. The Proposed Sur-Reply Does Not Clarify the Record

The proposed sur-reply [Doc. 55 / Doc. 58 Ex. A] does not correct any misstatements or introduce legally significant clarifications. Instead, it repeats factual disputes and rhetorical characterizations already presented in Defendant's opposition. The sur-reply would only prolong briefing unnecessarily and should be rejected as duplicative and procedurally improper.

IV. CONCLUSION

Defendant failed to obtain leave before filing his sur-reply, and his post hoc request does not satisfy the narrow grounds for permitting additional briefing. For the reasons stated above, Plaintiff respectfully requests that the Court DENY Defendant's Motion for Leave to File Sur-Reply [Doc. 58] and STRIKE the unauthorized sur-reply [Doc. 55].

Respectfully submitted this 25th day of April, 2025.

/s/ Joseph W. Weeks
Joseph W. Weeks
Attorney for Plaintiff
Georgia Bar No. 912341

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LR 7.1(D) NDGa. CERTIFICATE

I, Joseph W. Weeks, hereby certify that the foregoing PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR LEAVE TO FILE SUR-REPLY [DOC. 58] has been prepared with one of the font and point selections approved by the Court in LR 5.1, NDGa.

This 25th day of April, 2025.

McNally Weeks

/s/ Joseph W. Weeks
Joseph W. Weeks

CERTIFICATE OF SERVICE

The undersigned counsel of record hereby certifies that true and correct copies of the within and foregoing PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR LEAVE TO FILE SUR-REPLY [DOC. 58] have been served upon the Defendant via email and/or First Class Mail at Defendant's last known mailing address and/or email address, as follows:

Wendell Holmes, Jr.
5934 Rosie Lane, SE
Mableton, GA 30126
wendellholmesjr@gmail.com

This 25th day of April, 2024.

/s/ Joseph W. Weeks
Joseph W. Weeks
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Georgia Bar No. 912341

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